

OLC 74-2478
4 December 1974

MEMORANDUM FOR THE RECORD

SUBJECT: S. 4016, "Presidential Recordings and Materials Preservation Act"

1. S. 4016 was called up by the House yesterday on a motion to suspend the rules and was subsequently passed, apparently in identical form as the Senate passed it. Prior to the Thanksgiving recess the Record indicated that S. 4016 was to be reported by the Committee on House Administration by 27 November. We have not seen the House report.

2. It is clear from the language of the Senate report that this bill is aimed principally if not exclusively at "President Nixon's papers, tape recordings and other materials containing additional evidence relating to the Watergate crimes." The report focuses on the materials which were the subject of the agreement between Mr. Nixon and the U. S. Government which President Ford announced on 8 September. Unfortunately the language of the bill is not so clear and there is also language in the Senate report to support a broader interpretation.

3. Section 2(b) reads as follows:

Notwithstanding any other agreement or understanding made pursuant to section 2107 of title 44, United States Code, or any other law, the Administrator of General Services shall receive, retain, or make reasonable efforts to obtain, complete possession and control of all papers, documents, memorandums, and transcripts which constitute the Presidential historical materials of Richard M. Nixon as defined in section 2101 of title 44, United States Code, covering the period between January 20, 1969, and August 9, 1974, inclusive.

"Historical materials" is defined in 44 U.S.C.A. 2101 as:

... including books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value.

The term "Presidential historical materials" is not defined but in reading section 2101 in its entirety it is possible to interpret the term to include historical materials related to the President's official or personal life in the possession of anyone.

4. The initial attempt to define the scope of the Act will come when regulations are issued by the Administrator, GSA, as provided for by sections 5 and 6 of the Act. Section 6 provides guidelines for the regulations and includes the consideration of preventing "general access, except for use in judicial proceedings, to information relating to the Nation's security."

5. It is difficult to assess confidently the likely effect of S. 4016 on the Agency at this point; it could be none, it could also be significant. It all may turn on the Administrator's interpretation of the scope of the law. That interpretation could of course be challenged in court, and section 7 of the Act specifically provides for a three-judge review by the U. S. District Court for the District of Columbia, with a direct appeal to the Supreme Court. It should be noted that Sensitive Supplement to Volume III of our Watergate materials has not been returned by the White House.

6. Further action: Identify proper Agency official to contact the Administrator, GSA, to inquire as to his interpretation of the law and to express our concern for protecting Intelligence Sources and Methods.

STATINTL

Office of Legislative Counsel

Distribution:

Orig - S. 4016

1 - Watergate

1 - Chrono

1 - OGC

OLC:SWH:cg (6 Dec 74)